

DISPATCH		CLASSIFICATION	PROCESSING ACTION
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TO	Chief, Vietnam Operations	XX	MARKED FOR INDEXING
INFO.			NO INDEXING REQUIRED
FROM	Chief of Station, Vietnam		ONLY QUALIFIED DESK CAN JUDGE INDEXING
SUBJECT	PHOENIX Legal Problems Affecting Attack on VCI		MICROFILM
ACTION REQUIRED - REFERENCES			
Reference: FVST-21,151			
<p>1. Forwarded under separate cover are three (3) copies of [redacted] final report on National Security Legal Problems - Summary and Appraisal, and his memorandum of transmittal dated 25 July 1968, subject: Report - National Security Legal Problems.</p> <p>2. Since the compilation of this report, one major, significant new factor has begun to loom--that of some sort of peace settlement, cease-fire, and with respect to the legal problems affecting the effort to destroy or neutralize the VCI, the end of the wartime emergency conditions in which the present national security decrees are predicated. This fact recently has been identified and viewed with alarm by General Tran Thien Kiem, Minister of Interior. He strongly believes that new legislation is required, under the Constitution, to enable the Republic of Vietnam to deal effectively with the Communist-sponsored clandestine or covert political action, propaganda and subversion which must inevitably follow an end to open hostilities.</p> <p>3. We believe this is essentially a Vietnamese task, for which [redacted] legal assistance is not required. On the other hand, [redacted] assistance will be required (i.e. - will continue to be required) to assist the GVN in countering this expected new phase of the insurgency.</p>			
<p>Attachments: As stated, u.s.c.</p> <p>Dated 08 AUG 1968</p> <p>Distribution: 12 - Chief, Vietnam Operations</p> <p>CS COPY</p> <p>DEFERRED</p> <p>Excluded from automatic downgrading and declassification</p>			
CROSS REFERENCE TO	DISPATCH SYMBOL AND NUMBER	DATE	
	[redacted]	31 JUL 1968	
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25 July 1968

MEMORANDUM

SUBJECT: Report - National Security Legal Problems

1. Attached is subject report, dated July 1968. This is a progress report on the effort to gather information and data on the legal processing of Civilian Security Suspects, to correlate and analyze it, and to make recommendations for improvement. In addition, it serves as a memorandum for the record setting forth essential background information which will be useful to those who continue this effort.

2. The legal aspects of the problem are fairly clear now. The principal object of concern and emphasis should no longer be the judicial system, but rather the Security Committees and the Special Police.

3. The setting up of a new Military Field Court in IV Corps and advising on matters relating to the military courts can readily be handled by the Staff Judge Advocate, MACV. We have worked with them in assembling and organizing original data on the processing of CSS's through the military courts. They are in a position to continue that work and keep the information up to date.

4. The principal remaining tasks are (a) to strengthen the facilities and performance of the Special Police in the investigation and documentation of CSS cases, and (b) to supervise and improve the performance of the Provincial Security Committees. These fall within the realm of management, administration and police techniques. The Ministry of Interior is the responsible GVN agency. The appropriate U.S. staffs which work with Interior should develop and execute plans to accomplish the objectives outlined.

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5. The most arduous, time consuming and essential work to date has been the acquisition and assembly of meaningful and consistent facts and statistics as to what is happening (and not happening) to CSS's in the legal processing system. The staffs which work with Interior have the manpower and will be in a much better position than a legal consultant to obtain such information, principally from the Special Police and the Security Committees. SJA/MACV can obtain needed information on the military courts from the Directorate of Military Justice.

6. A full time U.S. legal consultant or employee is not essential for the further prosecution of this program.



Legal Counsel

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REPORT

"NATIONAL SECURITY

LEGAL PROBLEMS"

SUMMARY AND APPRAISAL

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NATIONAL SECURITY LEGAL PROBLEMS

SUMMARY AND APPRAISAL

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**CONFIDENTIAL**INTRODUCTION

This report is a sequel to the Handbook-National Security, prepared last December, which was a first attempt at summarizing the basic existing laws and procedures in the Republic of Vietnam connected with the apprehension, custody, screening, administrative detention, and trial of civilians whose activities are deemed to endanger the National security.

An effort has been made during the last three months to examine further the operation of the system for legal processing of Civilian Security Suspects (CSS's), in order to inform the responsible officials and to make findings and recommendations for the speeding up and improvement of this vital activity.

It is of course impossible to analyze the legal processing system without knowing what is happening in it. Most of the past twelve weeks has been consumed in obtaining, correlating and tabulating such facts. This is a large and difficult job, as there are no readily available sources. Statistics are fragmentary, contradictory and often do not treat CSS's as a separate category. Conditions vary throughout the country.

Based on the produce of research to date, it is possible to identify the key areas of the legal processing system which need to be improved and to make certain specific recommendations, particularly as to additional police investigative resources and as to the military court system.

No magic solutions have been found and none should be expected, despite the understandable pressure and desire to make the problems of legal processing disappear. Instead, a great deal of hard slogging lies ahead, in an unexciting and time consuming effort to improve administration and management.

The oft-voiced complaint that the "antiquated judicial system" of Vietnam is responsible for the inadequacies of the legal processing of Civilian Security Suspects is not borne out by this investigation. Nor is the contention that the judicial system is hopelessly bogged down with CSS cases. The data obtained in recent weeks indicates that only a

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small percentage of CSS cases are processed through the judicial system; the great majority are handled by administrative determination. This appears to be necessary to a considerable extent in the existing emergency and is consistent with measures employed elsewhere with success and substantial justice.

The detainee problem is old and vexing, with many roots. The frustration of some U.S. officials has led them to blanket condemnation of the legal processing system. As will be shown below, this is not a proper view. The avenues where energetic action should be channeled are indicated.

This report does not attempt to devise a comprehensive legal program in the field of national security, to outline a recodification and legislative program, or to evaluate the constitutional and political issues which will be involved in such an endeavor. Important work is being done along those lines by Committees of the National Assembly and by USAID, Public Administration (Legal). The environment for those activities will improve greatly, once the present severe threat to the national security of the Republic of Vietnam has subsided and the outlines of the future are clearer.



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Attorney at Law

Saigon, Vietnam  
July 1968

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# FINDINGS AND RECOMMENDATIONS

- I. The existing laws and procedures in Vietnam, if followed, are generally adequate to deal with the Viet Cong menace.
- II. Pressures are being exerted on the GVN, in the National Assembly and in the media, to make modifications in the above institutions, for constitutional and political reasons.
- III. The existing special and emergency institutions and procedures should not be done away with until clearly workable alternatives are provided.
- IV. The central problem in the legal processing of Civilian Security Suspects (CSS's) is administrative: adequate qualified personnel and good management practices.
- V. The most overburdened and undermanned component of the system, and the one most heavily involved in the legal processing, is the Special Police. Its proper functioning is essential to the correct and expeditious consideration of cases.
- VI. A considerable additional number of investigators must be trained for duty with the Special Police. Some of these should be detailed to the Provinces, but an adequate mobile pool of investigators should be kept in Saigon (or other central locations), to be sent out temporarily to points of greatest congestion in order to clear up backlogs of detainee cases.
- VII. Procedures for the preparation, handling and transmittal of information and files, to be used in the legal processing of security suspects, need to be improved. This is a matter of efficient and systematic practices. A training program in such techniques should be instituted for supervisory personnel of the Special Police.
- VIII. The Improper Release of detainees can best be combated by early documentation of the case, with duplicate copies to other concerned echelons or organizations. A standardized and uniform procedure for Prisoner (Detainee) Accountability should be developed. Proper maintenance and marshalling of information on security suspects is the necessary basis for any effort to curb Improper Release.

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- IX. To accelerate and improve the Legal Screening of detainees, the Government of Vietnam (Minister of Interior and Prime Minister) will need to provide systematic and positive direction to the Province Chiefs and the police in the Provinces. Periodic visits by representatives from Saigon will be needed.
- X. The Provincial Security Committees (PSC's) are the principal and the key deliberative body active in the legal processing of CSS's. Their performance needs to be improved and speeded up. Investigation should be made to determine to what extent assignment of work to assistants and the addition of administrative staff would assist in their functioning.
- XI. The Security Committees should be closely monitored by the Minister of Interior, to assure that they are meeting regularly and functioning properly. Periodic reports should be required. These should be reviewed carefully, and inspection visits to the Committees should be made from the Ministry.
- XII. The establishment of subsidiary "Security Committees", to operate at the District level, should be investigated.
- XIII. Standardized categories of "Most Wanted" security offenders should be developed. This will improve and speed up legal screening.
- XIV. The membership and procedures of the Security Committees should be changed, as conditions in Vietnam permit or require, to give a larger role to civilians and to afford more legal safeguards to the accused.
- XV. It is preferable to try a CSS in open court, if possible, and convict him of an offense against the national security, rather than detain him by Security Committee procedures; but it is much more difficult and time consuming.
- XVI. The Military Courts are not presently overburdened with Civilian Security Suspect cases. This is largely due to lack of referral of cases to the courts, principally by the Security Committees.
- XVII. More referrals to the courts will result from better police investigative work and from speeding up of Legal Screening and Security Committee activity.

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- XVIII. Important VCI can often be prosecuted in court on easily proven criminal charges, such as Draft Evasion. This type of approach should be considered where it will be difficult to prove an offense against the national security.
- XIX. The new Military Field Court established in Saigon this year is functioning effectively in the trying of CSS cases.
- XX. A new Military Field Court should be organized in Can Tho, to travel in IV Corps specializing in the trial of security cases. It will need to be supported by an active program aimed at improving and expediting the investigation and referral of cases.
- XXI. No new Military Field Court should be established at this time in I Corps. Rather, the effort there should be to rehabilitate and strengthen the existing two military courts, and to speed up processing by the Provincial Security Committees.
- XXII. The situation should be studied further in II Corps, to see if sufficient referrals of security cases to the military courts can be developed so as to justify the organization of a new Military Field Court there.
- XXIII. Better procedures should be developed for the conditional release of CSS's who are serving sentences or detention terms and for the monitoring of their progress. This would be a long range endeavor.
- XXIV. The Special Court, which tries cases in the area of Corruption, should have civilians rather than military men as Judges and Prosecutors. The return of these experienced military lawyers to the Directorate of Military Justice will materially assist the DMJ in staffing its organization so as to improve and speed up the processing of CSS's.
- XXV. The success of the program to improve legal processing will be directly commensurate with the priority and emphasis given it by the responsible high officials of the U.S. and Vietnamese Governments.

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<u>Finding</u>	<u>Paragraphs</u>	<u>Finding</u>	<u>Paragraphs</u>
I.	1-5, 54	XIV.	28
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ABBREVIATIONS USED

CSS - Civilian Security Suspect

DMJ - Directorate of Military Justice

PSC - Provincial Security Committee

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GENERAL COMMENTS

1. The system of laws and procedures in the Republic of Vietnam for dealing with offenses against the National Security, while naturally far from ideal due to the unfavorable conditions under which it has had to develop, is basically adequate to deal with the Viet Cong menace.\* This belief has been reinforced by a study of legal measures used in Malaya and Singapore during the "Emergency" and those in force there now.

2. Pursuant to constitutional provisions, the Parliaments of Malaysia and Singapore, having found the existence of a substantial threat to the national security, have passed laws to control the danger. Some of the most important provisions have to do with administrative detention of subversive elements. As with the Security Committees in Vietnam, a detention order may be issued, for a maximum period of two years. Also, as in Vietnam, arrests may often be made in such circumstances without a warrant, and the suspect held for as much as a month during investigation, provided certain approvals are obtained from higher echelons. In addition, during the time of extreme stress at the end of the Japanese occupation, military courts were used for the trial of civilian security offenders. Since that time, trials have been had in the civilian courts, which were carefully organized and nurtured by the British and able to handle the work effectively, especially since the number of such cases has been relatively small.

3. The above described legal processes for dealing with insurgency, developed by the British and carried on by the new governments, do not appear to constitute an excessive or oppressive use of the police power of the State in relation to the subversive threat, and have not prevented those countries from developing in a more democratic manner than other countries in Asia faced with similar or even lesser dangers.

4. It seems that administrative detention, on the recommendation of Security Committees, and trial of Civilian Security Suspects (CSS's) by military courts, are measures which have been justified and even necessitated by the severe threats to the internal security of Vietnam and the nascent state of the new civilian court system.

\*Handbook-National Security (Dec. 1967), p.9, para 6a; p.21

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5. The present situation in Vietnam is one of heightened uncertainty. Change and transition are likely in the legal field, as the result of political and military developments. As the National Assembly and the civilian court system improve their organization and more effectively administer and carry out their responsibilities under the new Constitution, they will assume a more authoritative role in the governing of the country. The Ministries of Interior and of Defense should then, and with some relief, concede to the aforementioned instrumentalities of government more of the responsibilities which the Ministries have been bearing. This process must be gradual and can begin with the substitution of civilian for military personnel in certain institutions and processes, as will be suggested below. In no event should the GVN make precipitate or inadequately considered changes which will undermine its ability to deal promptly and effectively with the menace of insurrection.

6. While existing legal institutions and processes have been generally adequate in concept to deal with the situation facing the country, the organization, operation and administration of them needs substantial improvement. It is the familiar story of wartime dislocation: Insufficient trained personnel and lack of systematic procedures, planning and management. The major effort on the legal front should be in this area. Some specific suggestions will be made below.

#### INVESTIGATIVE WORK

7. The sine qua non for efficient legal processing of Civilian Security Suspects, and the key to prompt and proper handling of their cases by Security Committees or military courts, is good investigative work and preparation of the legal case file. Without this, no committee or individual, no matter how high level or competent, can promptly and properly screen suspects in jails and detention camps or intelligently and justly decide cases brought before Security Committees, military courts, or Special Committees (para 21 below).

8. The vital importance of this police work is being further underscored by the reports now coming in from the Provinces in answer to our requests for facts and statistics on legal processing. These initial reports indicate that the great majority of detainees are released by the District or Province Chief and only a relatively small proportion of cases are referred to the Security Committees or military courts. The collection, collation, preservation and presentation of the

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evidence on which these releases or referrals is made are largely a police responsibility.

9. The release of a detainee as an Innocent Civilian, or the holding of him for further legal action, and the final disposition of his matter, all depend on developing and marshalling facts and information. Our research indicates that there are weaknesses in investigation and in the preparation and transmittal of the files on cases. With Civilian Security Suspects, it is normally the duty of the Special Police to do this initial investigation and to make out a preliminary case, or show the lack thereof. If the case is referred to a military court for trial, the Military Judicial Police then perform needed additional investigative work for the court.

10. Apparently, the Special Police are very short of qualified investigative personnel. From this situation flows a series of undesirable consequences: failure to identify VC Infrastructure (VCI) members, improper release of detainees, inability to identify and release Innocent Civilians, slowness in referring cases for further legal action, overcrowding of detention facilities, and general congestion and stagnation of the detention and legal processing system.

11. There is urgent need to provide additional trained Special Police investigators and supporting clerical help. Some of these should be sent to the Provinces to reinforce the staffs there, but a substantial pool of investigators should be maintained centrally, probably in Saigon. These men would be sent out to help clear up backlogs as they develop, such as where military operations or sweeps have produced large numbers of detainees. Naturally, the program must also be given priority and strong direction and impetus from Saigon, so that the investigators (not synonymous with Interrogators) will prosecute their work diligently and be responsive to the needs of the committees and courts which handle the cases. It has been reported that the Special Police recently instituted a requirement for weekly radio and monthly written activity reports from the field. Inspection teams are also to be sent out periodically. These are moves in the right direction.

12. In addition to the provision of more trained investigators, emphasis must be placed on systematic and orderly preparation, handling and transmittal of information and files - in a word, good management and office practices. Naturally,

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all this will not come about overnight, but the ship must be steered promptly in that direction. A training and management program in such techniques should be carried on for supervisory personnel of the Special Police.

13. The military judicial police have the responsibility to perform investigative work on cases which have been referred to the military courts. If the volume of civilian security cases referred for trial should be substantially increased, this body would need to be augmented. In the meantime, there is the question whether they should continue to be under the direction of the Joint General Staff or should be put under the Directorate of Military Justice (DMJ), as the latter office desires. This would make them more responsive to the DMJ. The making of any recommendation on this subject is left to the Staff Judge Advocate, MACV.

#### DETAINEES -- IMPROPER RELEASE

14. A particularly grievous problem has been the reported improper release of security suspects by District and Provincial authorities. To put this matter in proper perspective, one must recognize that a certain amount of evidence need exist in order to support the continued custody of an individual. At times, too, the capturing authority has made a mistake and taken in its net some fish that should be thrown back into the sea. Honest differences of opinion may arise as to the importance or practicality of holding certain individuals, particularly where adequate detention facilities do not exist. But withal, there are undoubtedly numerous cases of improper release, due to administrative inefficiency, or motivated by fear or favor.

15. Improper release of detainees is greatest in the early stages of detention, shortly after the individual is received by the civil authorities. As a file develops on him, and is disseminated, and as he is passed on to higher authority at Province and Region level, it becomes more difficult for him to be released without considered and documented official action. It is important, therefore, to make an official record of his case at the moment he is received by the civil authorities and to report the custody promptly to higher authority. There should be a system for maintaining central records of detainees, so that releases will not go unknown or unexplained. Periodic reports should be required.

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The better investigative resources and procedures discussed above, and the continued development of the Provincial Interrogation Centers (PIC's) and District Intelligence and Operations Coordinating Centers (DIOCC's), will also contribute importantly to the effort to curb wrongful release of detainees. Important VCI will be identified correctly and early and can then be removed to a secure location for further processing. The general problem of Prisoner Accountability is being studied and more detailed recommendations will be forthcoming. The creation and maintenance of adequate records is the essence of such a system.

#### LEGAL SCREENING

16. Civilian Security Suspects received into the hands of the civil authorities should be expeditiously processed and either released as Innocent Civilians or referred to the Provincial Security Committee for action. (Clear cases may reportedly be forwarded directly to a military court.) The District and Province Chiefs are charged with these responsibilities. The processing has often been inordinately slow and backlogs have developed, particularly where investigative and review facilities are overburdened with large numbers of detainees produced by military operations.

17. Provincial Security Committees (PSC's) review cases referred to them and decide on the detainee's release, detention, or referral to a military court. To assist in legal screening, it might be desirable to have a small "District Security Committee" operating at the District level, either as an autonomous local body or as a sub-committee of the Provincial Security Committee. It could give him a brief hearing and decide on his release or recommend continued detention for further investigation or for action by the Security Committee. The Province Judge, in his capacity as a member of the PSC, might be in charge of this program. The Judge, or one of his assistants or Prosecutors, would participate in the "District Committee" deliberations. This would introduce a legal presence at the first stage of legal processing. "Security Committees" at the District level have been reported to be functioning in the processing of security suspects, particularly in II Corps, but we have little information as to their actual operations or effectiveness. This should be investigated further and reported on.

18. Some have suggested that a magistrate do the first legal screenings; however, perhaps a committee is better suited for the purpose. Often an individual official hesitates to release a person who has been captured or arrested by

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high authority; an individual may also be more subject to pressure than a committee.

19. The conduct of legal screening will be aided by the creation and standardization of certain categories of Most-Wanted security offenders. This is now being worked on by the Ministry of Interior and cooperating U.S. elements. There could be these lists: individuals (by name), positions (by title), and functions (by description). A person holding a position of importance in the PRP or the NLF, thus, could be sent automatically to the Security Committee for action. In this connection, it should be noted that Ministry of Interior regulations concerning the operation of Security Committees lay down the following rules for detention of security suspects:

Maximum of six months:	Light offenders - Communist sympathizers and dupes
Maximum of 18 months :	Communist Party members active after 1954 and at the present
Maximum of 24 months :	Communist Party members active before 1954, leaders and high level members

20. In addition to proper organization and administration of the effort in the Provinces and Districts, Saigon (Offices of Prime Minister and Minister of Interior) must periodically look into legal processing in each Province and also examine the situation at known major points of congestion.

21. Recently, the Prime Minister ordered the creation of "Special Committees" in all the Provinces and autonomous cities of the country. (Circular No. 102/TT/Th.T/PCL, of 18 June 1968). These committees are to review the current backlogs of security suspects awaiting legal processing. Where a person has been in custody for more than one month without his case being prosecuted before a court or brought before a Security Committee, and prima facie evidence has not been developed against him, the Special Committee may release him provisionally under certain stated conditions. The committees are to report the results of their work to the office of the Prime Minister.

22. Officials of the Interior Ministry have assured U.S. officials that persons on whom there is substantial evidence, or who are on Blacklists or Most Wanted lists, will not be released by the committees. The following steps should also be taken with those who are subject to release by the committees: careful review of the file, if any; opportunity for

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the capturing authority to produce more evidence; creation of a permanent record on the suspect, with identifying details, including photograph and fingerprints; and the making of a written disposition of the case. Subsequent monitoring of the conduct of the released detainee would also be highly desirable, but probably little substantial progress can be expected at present in this regard.

23. Apparently, the Special Committees were planned only to make a one-shot review of detainee backlogs, and political advantages to the GVN are expected to flow therefrom. However, their operation should be observed, and if their work has been useful, the experience gained should be used in future planning. These committees have the advantage of a legal man as chairman and substantial civilian representation. The composition is:

Judge -- Chairman  
Provincial Council or City Council Member  
Province or City Official  
Sector Command Representative  
Police Representative

#### SECURITY COMMITTEES

24. The Security Committees, which function in the Provincial capitals and the autonomous Cities of Vietnam, are the core of the legal and administrative machinery for control of the Viet Cong insurgency. Means must be found to retain them for the foreseeable future, despite technical legal arguments being made against them, based on the new Constitution.

25. Provincial Security Committee (PSC) operations should be improved from an administrative standpoint. The members of the PSC's are very important and busy Province officials. As a result, they often do not devote enough time to assure speedy and proper disposition of Committee business. Further study needs to be made of PSC operations, to determine to what extent assignment of work to assistants and the addition of administrative staff would assist in their functioning. Legal screening of security suspects by committee at the District level should also be considered. As suggested above (para. 17), an adjunct of the PSC might carry on such work. The organizational form this should take needs to be worked out.

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26. Available statistics showing case loads and action taken by Security Committees in II Corps and IV Corps are set out and discussed below in paragraphs 33-35. A special effort should be made in I Corps and IV Corps to expedite processing by PSC's because of the current program to remove substantial numbers of detainees from those areas to safe detention facilities in Con Son and elsewhere.

27. We have just obtained copies of the detailed regulations and instructions of the Ministry of Interior governing the organization and functioning of Security Committees and the procedures for arrest, temporary custody, detention, search and seizure in cases involving Civilian Security Suspects. These have been translated and will be studied carefully. Additional reports or recommendations may be made as a result of that study. This is a delicate area of inquiry and disseminations on the subject should bear the proper security classification.

28. As circumstances permit, the procedures of the Security Committees should be liberalized to give the accused more of the safeguards he would have in a civilian court of law. For example, the Ministry of Interior might issue an instruction that, unless clearly impractical, the accused be given an opportunity to appear before the Security Committee. Also, he should not be denied the right to be represented by counsel provided by himself. It does not appear practical, at this stage of events, for the government to provide counsel for detainees or to turn Committee sessions into adversary proceedings. At some later date, it may be feasible to alter the composition of the Security Committees; to increase the representation of civilians thereon. This would happen automatically if, for example, more new Province Chiefs should be civilians. In Malaysia, where the Communist insurgency has been brought under control, the Advisory Board, which reviews cases and makes recommendations as to detention of Civilian Security Suspects, is composed entirely of civilians. The present three members are retired pensioners who have no other occupation.

#### MILITARY COURTS

29. In order to increase the capability of the military court system to try Civilian Security Suspects, Decree-Law No. 49/67 was signed 30 October 1967 by the Chief of State,

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authorizing creating of four additional Military Field Courts. General Thieu was sworn in as President under the new Constitution on 31 October 1967, since which date he has not had the constitutional power to create new courts.

30. A new Military Field Court has been organized in III Corps and began hearing cases on 6 May 1968. It has been active in the trial of Civilian Security Suspects and has heard some 61 cases\* in III Corps during the period May-June, 1968. At the end of June there was a backlog of 254 cases. The court will travel to Con Son Island soon to hear cases of detainees held there. The activities of this court are being monitored, to gain experience and information which will be useful in approaching the problem in the other Corps areas.

31. The handling of security cases by the military courts is not an isolated activity but is part and parcel of the whole legal apparatus and procedure for dealing with these offenders. Hence, it is necessary to have a basic understanding of the volume, flow and disposition of security cases in the overall legal system, before any intelligent suggestions or recommendations can be made for improvement of the handling of such cases by the military courts. Particularly, we have needed to have facts as to the caseload of the existing Military Field Courts, before recommending the creation of additional such courts; otherwise, we might be far off target and go to a great deal of trouble and some expense to create unneeded courts that would be an administrative burden on the Directorate of Military Justice (DMJ). The needed information was set out in a memorandum of 18 December 1967 entitled "Civilian Security Suspects -- Legal Processing" and consists basically of the following data on the military courts and on the Security Committees:

- Backlog at beginning of period.
- New cases received during period.
- Cases decided during period, and their disposition.
- Backlog at end of period.

\*These "cases" involve a considerably larger number of individuals.

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32. Considerable delay and difficulty has been encountered in getting the needed information. However, answers to requirements sent out are now beginning to come in. Reports from the Provinces show that the great majority of security suspects are processed by the police and released by the District or Province Chief, as Innocent Civilians or under the "Guarantee" of local authorities or relatives. Thus, the police, without the participation of Security Committees or the military courts, is the government agency involved in most cases. If the police are overburdened with work or otherwise incapable of properly investigating and documenting the cases, there will be relatively few referrals to the Security Committees and the courts. The Security Committees, nationwide, handle a substantial number of cases, though it is apparently a small percentage of those detained as security suspects, as explained above. The military courts receive for trial (usually from the Security Committees) a much smaller number of such detainees.

33. Some samples of reports received from II Corps, covering operations of Provincial Security Committees during varying periods of time in 1967 and 1968, follow:

Province	Backlog	CSS's Rec'd	Released (Innocent Civilians)	Referred To Mil. Courts	Detained By Sec. Committee
Binh Thuan	65	371	254	3	91
Khanh Hoa	29	796	631	0	114
Lam Dong	106	87	108	16	10
Ninh Thuan	-	517	371	10	4
Tuyen Duc	-	1,238	1,073	-	63
Cam Ranh City	-	37	14	-	23
Totals	200	3,046	2,451	29	305

34. In view of the weakness of statistics in Vietnam, these figures must not be assumed to give a definitive or complete description of the situation in the reporting areas, much less to describe the situation in other parts of the country. They do tend to corroborate previous reports that in II Corps a relatively small number of Civilian Security Suspects are being tried by the military courts. This seems to be a matter of case referral since the military courts there are said not to have any large backlog of such cases.

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35. A report just received covering the activities of the Security Committees in IV Corps for the period January - May 1968 shows the following:

Province	Backlog 12/31/67	CSS's Rec'd	Released (Innocent Civilians)	Referred To Mil Courts	Detained By Sec. Committee
An Giang	-	-	-	-	-
An Xuyen	-	-	-	-	-
Ba Xuyen	-	263	142	2	121
Bac Lieu	-	315	139	6	95
Chau Doc	-	118	237	17	102
Chuong Thien	-	-	-	-	-
Dinh Tuong	-	1,439	197	43	313
Go Cong	-	141	11	-	25
Kien Giang	-	167	2	-	3
Kien Hoa	-	32	21	1	10
Kien Phong	21	144	-	14	76
Kien Tuong	23	55	32	2	21
Phong Dinh	-	758	363	5	46
Sa Dec	-	194	59	4	7
Vinh Binh	7	49	3	8	31
Vinh Long	-	214	175	-	-
Totals	51	3,889	1,381	102	850

These figures, although apparently incomplete, evidence a much smaller percentage released as Innocent Civilians than in II Corps, but the number of cases referred to the military courts is still quite small.

36. On the other hand, a substantial (though lessening) percentage of CSS's undergoing terms of confinement were sentenced by the Military Courts. Public Safety Division prison population figures show the following:

Reporting Date	Sentenced By Mil. Courts	Detained- Sec. Comms.	Totals
Oct. 1, 1967	4,498	5,668	10,166
Apr. 15, 1968	3,701	6,733	10,434
June 25, 1968	3,695	8,143	11,838

Considerable numbers of prisoners are released from time to time through Executive Clemency (amnesty, etc.). Those sentenced by courts are said to be less subject to such release those held pursuant to a PSC Detention Order.

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37. There are various reasons why CSS cases are not referred, in large numbers, to the military courts for trial. First is the necessity for the police to investigate and document the case in sufficient detail and to obtain evidence to support a trial in open court. The weaknesses in this regard have been described above. It is much easier to prepare a case for presentation to the Provincial Security Committee. In addition, it may be that the insurge of detainees, as a result of the Viet Cong Tet and subsequent offensives, has overwhelmed the police even further.

38. For the present, it may be well to emphasize detention by the Security Committees, as the best way to expedite the legal processing of detainees and clear up the backlogs of unprocessed detainees. Persons so detained may still be tried in the courts. This procedure is employed in Malaysia, which has a system for "preventive detention" of persons deemed likely to act in a manner prejudicial to the national security. Where there is sufficient evidence of the commission of an offense, trial is had in the regular civil courts. If such evidence is developed while a person is in preventive detention, he may be tried and sentenced if guilty; preventive detention is no impediment to trial on criminal charges. The same appears to be true in Vietnam.

39. In spite of the additional burden of taking a case to trial in the military courts, the effort to increase the flow of Civilian Security Suspect cases through the military courts should continue, for a number of reasons. It is more in keeping with democratic processes to charge a man in open court rather than decide his matter administratively in a private committee meeting. A suspect convicted in court is determined to have violated the criminal laws of the country and hence clearly deserves punishment, while the Security Committees engage in administrative detention -- that is, they detain people considered dangerous to the national security, although the commission of a crime has not been proven. It also appears that a suspect sentenced by a court is less likely to be released prematurely than one detained by Security Committee action. Also, when peace comes to Vietnam, logic will favor the release of persons held in preventive detention, but not of criminals serving prison sentences.

40. It is by no means easy to try and to convict an important member of the VC Infrastructure in open court. Witnesses are reluctant to testify and the case may be hard

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to prove, if he does not confess and was not caught in the act of committing a crime. To facilitate prosecution, we have investigated the possibility of increased use of charges of Draft Evasion, Desertion from the armed forces, and the forging or use of False Identification documents or permits. This approach appears to be quite feasible in many cases and has been used in the past. (See Handbook -- National Security (Dec. 1967) p. 9, para c). However, GVN authorities do not readily appreciate the potential of proceeding in this manner. (They haven't had to resort to convicting gangsters for income tax evasion!) They should be instructed along these lines, for apparently most of the leaders of the Viet Cong are technically draft evaders (or could easily be made such by small changes in the draft regulations), especially in view of the new General Mobilization recently ordered by President Thieu.

41. We come back to the fact that there is chronically a large number of Civilian Security Suspects in detention and awaiting legal processing. Public Safety Division figures show the figure on 25 June 1968 to be 9,840, broken down by CTZ as follows:

I Corps	2,437
II Corps	2,215
III Corps	1,752
Natl. Prisons	437
IV Corps	<u>2,999</u>
Total	9,840

The number of security suspects\* awaiting action and in process of trial at the military courts on 30 June 1968 was as follows:

	<u>Mil. Courts (Regular)</u>		<u>Mil. Field Courts</u>		<u>New Field Court</u>		<u>Totals</u>
	<u>Cases</u>	<u>Persons</u>	<u>Cases</u>	<u>Persons</u>	<u>Cases</u>	<u>Persons</u>	<u>Person</u>
I Corps	117	164	138	148			312
II Corps	199	350	8	30			380
III Corps	4	18	12	24	254	414	456
IV Corps	60	90	380	505			<u>595</u>
					Grand Total		<u>1,743</u>

\*These figures are not strictly limited to civilians but include some enlisted men and RF/PF personnel.

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42. From the foregoing, it is evident that there is a relatively large existing and potential case load of security suspects in IV Corps. The establishment of an additional Military Field Court there has been endorsed by the Staff Judge Advocate in Can Tho and other officials there. The Director of Military Justice, Colonel Nguyen Van Duc, concurs in the need for the establishment of such a court, provided the United States will give support in the form of needed equipment and furniture, as was done in the case of the new field court set up in III Corps this year. Someone on the U.S. side should be specifically designated to follow up on and accomplish these administrative matters. Colonel Duc would also like a high U.S. official to suggest to the Minister of Defense that, contrary to past practice, the President of the new field court, and his alternate, both be qualified military lawyers. There should be an Assistant Prosecutor also. With these improvements, which are not required by the law, the new court will be able to perform in a creditable fashion in the eyes of the public and the legal profession.

43. The new field court would travel frequently, thus attracting more business from the Provinces, and would specialize in the handling of CSS cases, as has the new Field Court in III Corps. Air transportation is often not readily available to Vietnamese organizations not directly connected with military operations. U.S. backing or assistance in some form may be needed.

44. The mere creation of another court might do little to improve and speed up the legal processing of detainees. It is essential that the GVN, with the assistance of the U.S., make a concentrated effort in IV Corps to increase and improve the Special Police investigative capability and to improve and speed up the functioning of the Security Committees. If these things are done, a steady flow of cases to and through the military court system should occur.

45. It is deemed inadvisable to establish a new Military Field Court in I Corps in the near future. The regular military court facility at Hue was destroyed during the Tet offensive and the court personnel withdrew to Danang, where the field court also sits. The principal effort now will be to get military trials reinstituted in Hue and to build up the personnel and facilities of the two existing courts.

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46. As to II Corps, it has been the feeling of the Staff Judge Advocate in Nha Trang, based on the facts as he has observed them, (and which are corroborated by the statistics in paragraphs 33 and 41 above) that there is presently an insufficient caseload of CSS cases to justify a new field court in II Corps. The Director of Military Justice also says this is the case. He has agreed, however, that the situation should be studied with a view to seeing if legal processing by the police and Security Committees can be improved so as to provide sufficient case load for a new field court to be established in 1969. It has been suggested by several persons that any such new court should be organized in Pleiku, the headquarters of the Vietnamese Tactical Zone.

#### EVIDENCE

47. The central importance of collecting and presenting evidence has been discussed at various places above, particularly in connection with the work of the Special Police. That organization is deeply involved in the information gathering and collating activities of the PIC's and the DIOCC's. Those activities must be carried on in such a way as not to lessen the output of the Special Branch in investigation and file preparation of the legal case against a CSS. Rather, the information being collected in the PIC's and DIOCC's should be made available in a prompt and efficient fashion for the legal processing of the suspect and thus contribute to the proper and expeditious legal handling of cases.

48. Procedures for transmitting dossiers on CSS's between the police and District, Provincial and judicial authorities must be improved, to assure that all available data is made available, duplication of work avoided, and processing expedited.

#### RELEASE PROCEDURES

48. Provision is made in the existing regulations of the Ministry of Interior for review of the cases of CSS's shortly prior to the end of their sentences, to determine if the individual should be released or an additional period of detention ordered. There is also some provision for earlier review, and release when it is deemed the person can be rehabilitated as a law-abiding citizen. However, there is no well defined and administered system for release "On Conditions" and for "Post Care" such as has been developed in Malaysia. These should be part of the long range detention program in Vietnam. Again, the Special Police will bear a

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heavy responsibility in the review of the cases and the monitoring of the activity of those released On Conditions.

#### CORRUPTION

50. Various of the Decrees and Decree-Laws which set forth offenses against the national security also define offenses in the nature of bribery, influence peddling, embezzlement, smuggling, war profiteering, etc., and prescribe punishment therefor. This is a broad and proper view: that corruption threatens the national security.

51. By Decree-Law No. 003/66 of 15 February 1966, the "Special Court" was established, to try these offenses during the existing declared state of war. The Military Field Courts also have extensive jurisdiction in the field of corruption, when the monetary amount involved falls below stated limits.

52. The Judges sitting on the court and the Prosecutors are all military Judge Advocates, drawn from the staff of the Directorate of Military Justice. By drawing on the DMJ for some of its best people, it was possible for the Government to put the Special Court in operation promptly. However, some thoughtful Vietnamese officials are now questioning this arrangement, on the ground that military personnel are subject to pressure from the military establishment and specifically from higher ranking officers. A high proportion of those suspected of corruption are military officers, many of them holding important non-military positions in the government. Also, it is claimed (though by no means proven) that the military lawyers on the court are not as competent for these cases as civilian judges who could be named in their place. Finally, with the advent of the new Constitution and the National Assembly, the trend is toward increased participation by civilians in the operation of the government.

53. The foregoing arguments are persuasive. It appears desirable to place well qualified civilians on the Special Court, as Judges and Prosecutors. This will make it possible to return to the Directorate of Military Justice some nine of its best personnel and thus help the DMJ to staff the recommended new Military Field Court in IV Corps and to strengthen the staffs of other military courts, particularly in I Corps.

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CONCLUDING REMARKS

54. Contrary to the often expressed view, the existing system for legal processing of Civilian Security Suspects is appropriate for the job. The military courts and Security Committees are logical instrumentalities for the times and the situation. Improvements should be made in their functioning and supervision, as outlined above.

55. The work of the Special Police in preparing and presenting the legal file on the case lies at the heart of the proper disposition of CSS cases, whether by a District or Province Chief, by a Security Committee, or a military court. It is by improving the investigative capability of the Special Police that the greatest contribution can be made to the legal processing of CSS's.

56. The U.S. components which conduct liaison with the appropriate offices of the Ministry of Interior should initiate discussions for the development of detailed plans for improving the functioning of the Special Police and the Security Committees in the processing of CSS's. The same is true of the follow-up on execution of the plans. The principal skills involved are administrative and investigative in nature.

57. The results to be obtained from the effort to improve legal processing will be commensurate with the priority and emphasis given the program by the U.S. Government and the GVN. Without impetus proceeding from a high official level, only modest progress, at best, can be expected. With such backing and direction, much may be accomplished.